

108TH CONGRESS
1ST SESSION

H. R. 2123

To amend the Safe Drinking Water Act and the Federal Water Pollution Control Act concerning water pollution resulting from discharges of perchlorate.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mrs. CAPPS (for herself, Mr. BISHOP of New York, Ms. LOFGREN, Mr. HONDA, Mr. BEREUTER, Ms. DELAURO, Mr. GEORGE MILLER of California, Mr. GRIJALVA, Mr. MCGOVERN, Mrs. DAVIS of California, Mr. SANDERS, Ms. LEE, Mrs. MALONEY, Mr. THOMPSON of California, Ms. MCCOLLUM, Mr. LANTOS, Ms. ROYBAL-ALLARD, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. LINDA T. SÁNCHEZ of California, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Safe Drinking Water Act and the Federal Water Pollution Control Act concerning water pollution resulting from discharges of perchlorate.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Perchlorate
5 Pollution Act of 2003”.

1 **SEC. 2. MAXIMUM CONTAMINANT LEVEL FOR PER-**
2 **CHLORATE.**

3 Section 1412(b)(12) of the Safe Drinking Water Act
4 (42 U.S.C. 300g-1(b)(12)) is amended by adding at the
5 end the following:

6 “(C) PERCHLORATE.—

7 “(i) DECLARATION OF PERCHLORATE
8 AS CONTAMINANT.—Congress declares that
9 perchlorate is a contaminant subject to
10 regulation under this title.

11 “(ii) MAXIMUM CONTAMINANT
12 LEVEL.—Not later than July 1, 2004, the
13 Administrator shall establish a maximum
14 contaminant level for perchlorate that pro-
15 vides an adequate margin of safety for vul-
16 nerable populations (including children and
17 pregnant women).

18 “(iii) REGULATION.—On and after
19 the date of establishment of the maximum
20 contaminant level under clause (ii), the Ad-
21 ministrator shall regulate perchlorate as an
22 inorganic contaminant in accordance with
23 part 141 of title 40, Code of Federal Regu-
24 lations (or a successor regulation).”.

1 **SEC. 3. PERCHLORATE POLLUTION PREVENTION.**

2 The Federal Water Pollution Control Act is amended
3 by inserting after section 406 (33 U.S.C. 1346) the fol-
4 lowing:

5 **“SEC. 407. PERCHLORATE POLLUTION PREVENTION.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) FUND.—The term ‘Fund’ means the Per-
8 chlorate Pollution Prevention Fund established by
9 subsection (i)(1).

10 “(2) PERCHLORATE STORAGE FACILITY.—

11 “(A) IN GENERAL.—The term ‘perchlorate
12 storage facility’ means a facility that stores
13 more than 375 pounds of perchlorate over the
14 course of a calendar year.

15 “(B) EXCLUSION.—The term ‘perchlorate
16 storage facility’ does not include a facility that
17 stores perchlorate for a retail or law enforce-
18 ment purpose.

19 “(b) DISCHARGE OF PERCHLORATE.—

20 “(1) NOTIFICATION.—

21 “(A) IN GENERAL.—Any person that,
22 without regard to intent or negligence, causes
23 or permits to occur a discharge of perchlorate
24 into or on any waters of the United States shall
25 notify the Administrator and the appropriate

1 State water pollution control agency of the dis-
2 charge as soon as practicable after—

3 “(i) the person has knowledge of the
4 discharge; and

5 “(ii) the notification may be provided
6 without substantially impeding cleanup or
7 other emergency measures.

8 “(B) CONTENTS OF NOTICE.—A notice
9 under subparagraph (A) shall include—

10 “(i) the volume of perchlorate dis-
11 charged;

12 “(ii) a description of the extent of the
13 discharge;

14 “(iii) a copy of each document relat-
15 ing to any monitoring for potential dis-
16 charges undertaken by the person on or
17 before the date of the discharge; and

18 “(iv) a description of any actions
19 taken by the person in response to the dis-
20 charge.

21 “(C) FAILURE TO PROVIDE NOTICE.—For
22 each day for which a person fails to provide the
23 notice required by subparagraph (A), the per-
24 son shall—

25 “(i) be guilty of a misdemeanor; and

1 “(ii) be punished by a fine of not less
2 than \$500 nor more than \$5,000.

3 “(2) DISCHARGE UNDER PERMIT.—Paragraph
4 (1) applies to a discharge of perchlorate under a
5 permit issued under section 402.

6 “(3) PENALTIES.—A penalty collected under
7 paragraph (1)(C)(ii) shall be deposited in the Fund.

8 “(c) SUBMISSION OF INFORMATION.—Not later than
9 January 1, 2005, each owner or operator of a perchlorate
10 storage facility that has been operated, by that owner or
11 operator or by any other person, at any time after January
12 1, 1950, shall submit to the Administrator and the appro-
13 priate State water pollution control agency a report that
14 includes, for the period beginning on January 1, 1950 (or
15 such later date as the perchlorate storage facility initiated
16 operations), and ending on the date of submission of the
17 report—

18 “(1) the volume of perchlorate stored during
19 each calendar year at the perchlorate storage facil-
20 ity;

21 “(2) a description of each method of storage
22 used; and

23 “(3) a copy of each document relating to any
24 monitoring undertaken for potential discharges from
25 the perchlorate storage facility.

1 “(d) LIST OF PERCHLORATE STORAGE FACILI-
2 TIES.—Not later than June 1, 2005, and annually there-
3 after, the Administrator, in consultation with each State
4 water pollution control agency, shall publish in the Federal
5 register a list of perchlorate storage facilities operating in
6 the United States at any time during the period—

7 “(1) beginning on January 1, 1950; and

8 “(2) ending on the date of publication of the
9 list.

10 “(e) LIST OF PERCHLORATE DISCHARGES.—Not
11 later than June 1, 2005, the Administrator, in consulta-
12 tion with each State water pollution control agency, shall
13 annually publish in the Federal Register a list of dis-
14 charges of perchlorate that occurred during the 1-year pe-
15 riod preceding the date of publication of the report (in-
16 cluding a list of locations at which perchlorate was de-
17 tected in groundwater within the State during that pe-
18 riod).

19 “(f) PENALTIES.—

20 “(1) IN GENERAL.—An owner or operator of a
21 perchlorate storage facility that violates subsection
22 (c) shall be liable for a civil penalty of not less than
23 \$500 nor more than \$5,000 for each day of viola-
24 tion.

1 “(2) DETERMINATION OF AMOUNT.—In deter-
2 mining the amount of a civil penalty, a court of com-
3 petent jurisdiction shall consider all relevant cir-
4 cumstances, including—

5 “(A) the extent of harm or potential harm
6 caused by the violation;

7 “(B) the nature of the violation;

8 “(C) the period over which the violation oc-
9 curred;

10 “(D) the frequency of any past violations
11 by perchlorate storage facility involved; and

12 “(E) any action taken to remedy the viola-
13 tion.

14 “(3) DEPOSIT IN FUND.—A penalty collected
15 under paragraph (1) shall be deposited in the Fund.

16 “(g) REGULATIONS.—Not later than June 1, 2005,
17 the Administrator shall promulgate regulations that—

18 “(1) require each perchlorate storage facility—

19 “(A) to meet minimum, industry-estab-
20 lished training standards; and

21 “(B) to be operated in a manner consistent
22 with industry-established best management
23 practices; and

24 “(2) implement an outreach effort to educate
25 owners and operators of perchlorate storage facilities

1 concerning the regulations promulgated under this
2 subsection.

3 “(h) STATE LOAN PROGRAM.—

4 “(1) IN GENERAL.—The Administrator, in co-
5 ordination with each State water pollution control
6 agency, shall carry out a loan program to assist pub-
7 lic water suppliers and owners of private wells in ac-
8 quiring or providing water that meets applicable
9 Federal and State standards for drinking water to
10 replace water contaminated by perchlorate.

11 “(2) APPLICATIONS.—A public water supplier
12 or owner of a private well that seeks to receive a
13 loan under paragraph (1) shall submit to the Admin-
14 istrator an application that is in such form, and that
15 contains such information, as the Administrator
16 shall require.

17 “(3) AMOUNT.—A loan provided under para-
18 graph (1) shall be for not less than \$10,000 and not
19 more than \$750,000.

20 “(4) TERM.—The term of a loan provided
21 under paragraph (1) shall be—

22 “(A) not more than 20 years, if the loan
23 is secured by real property; or

24 “(B) not more than 10 years, if the loan
25 is not secured by real property.

1 “(5) INTEREST RATE.—The interest rate for a
2 loan shall be equal to the rate of interest applicable
3 at the time of the loan commitment to Federal secu-
4 rities having a term of 10 years.

5 “(6) USE OF LOAN FUNDS.—Funds from a loan
6 provided under paragraph (1) may be used to pay
7 up to 100 percent of costs incurred by the recipient
8 of the loan in acquiring or providing water that
9 meets applicable Federal and State standards for
10 drinking water to replace water contaminated by
11 perchlorate.

12 “(7) LOAN FEE.—The Administrator may
13 charge a loan fee, not to exceed an amount equal to
14 2 percent of the amount of the loan, to an applicant
15 for a loan under paragraph (1).

16 “(8) DEPOSIT IN FUND.—The Administrator
17 shall deposit in the Fund repayments, including in-
18 terest, on loans provided under paragraph (1) and
19 loan fees collected under paragraph (7).

20 “(i) PERCHLORATE POLLUTION PREVENTION
21 FUND.—

22 “(1) ESTABLISHMENT.—There is established in
23 the Treasury of the United States a revolving fund,
24 to be known as the ‘Perchlorate Pollution Prevention

1 Fund', to be used in carrying out this section, con-
 2 sisting of—

3 “(A) such amounts as are deposited in the
 4 Fund under subsections (b)(3), (f)(3), and
 5 (h)(8); and

6 “(B) any interest earned on investment of
 7 amounts in the Fund under paragraph (3).

8 “(2) EXPENDITURES FROM FUND.—

9 “(A) IN GENERAL.—Subject to subpara-
 10 graph (B), upon request by the Administrator,
 11 the Secretary of the Treasury shall transfer
 12 from the Fund to the Administrator such
 13 amounts as the Administrator determines are
 14 necessary—

15 “(i) to carry out this section; and

16 “(ii) to provide loans under subsection
 17 (h).

18 “(B) ADMINISTRATIVE EXPENSES.—An
 19 amount not exceeding 5 percent of the amounts
 20 in the Fund shall be available in each fiscal
 21 year to pay the administrative expenses nec-
 22 essary to carry out this section.

23 “(3) INVESTMENT OF AMOUNTS.—

24 “(A) IN GENERAL.—The Secretary of the
 25 Treasury shall invest such portion of the Fund

1 as is not, in the judgment of the Secretary of
2 the Treasury, required to meet current with-
3 drawals. Investments may be made only in in-
4 terest-bearing obligations of the United States.

5 “(B) ACQUISITION OF OBLIGATIONS.—For
6 the purpose of investments under subparagraph
7 (A), obligations may be acquired—

8 “(i) on original issue at the issue
9 price; or

10 “(ii) by purchase of outstanding obli-
11 gations at the market price.

12 “(C) SALE OF OBLIGATIONS.—Any obliga-
13 tion acquired by the Fund may be sold by the
14 Secretary of the Treasury at the market price.

15 “(D) CREDITS TO FUND.—The interest on,
16 and the proceeds from the sale or redemption
17 of, any obligations held in the Fund shall be
18 credited to and form a part of the Fund.

19 “(4) TRANSFERS OF AMOUNTS.—

20 “(A) IN GENERAL.—The amounts required
21 to be transferred to the Fund under this sub-
22 section shall be transferred at least monthly
23 from the general fund of the Treasury to the
24 Fund on the basis of estimates made by the
25 Secretary of the Treasury.

1 “(B) ADJUSTMENTS.—Proper adjustment
2 shall be made in amounts subsequently trans-
3 ferred to the extent prior estimates were in ex-
4 cess of or less than the amounts required to be
5 transferred.

6 “(j) REPORTS.—Not later than 1 year after the date
7 of enactment of this section, and annually thereafter, the
8 Administrator shall submit to the Committee on Environ-
9 ment and Public Works of the Senate and the Committee
10 on Transportation and Infrastructure of the House of
11 Representatives a report that describes progress made in
12 implementing this section.

13 “(k) NO EFFECT ON STATE LAW.—Nothing in this
14 section preempts or otherwise affects any State law (in-
15 cluding any State law that contains a requirement that
16 is more stringent than a requirement under this section).”.

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